IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.36 OF 2007

1. Govinda News Link,)
At Govinda News Link Utility)
Centre, Opposite Rajiv Gandhi)
Bhavan (Basement), Sharanpur)
Road, Nasik)
Through its Directors-)

2. Manoj Shantilal Chordiy,)
Age: Adult, Occ:Business &)
Proprietor and Director of)
Govinda News Link)

3. Raju Shantilal Chordiya,)
Age: Adult, Occ:Business &)
Proprietor and Director of)
Govinda News Link)

4. Rajesh Meghraj Sharma,)
Age:Adult, Occ: Actor and)
Announcer of Govinda News Link)

5. Shashikant Pagare,)
Editor of Govinda News Link)

Sr.Nos.1 to 5 having its address)
at Utility Centre, Opposite)
Rajiv Gandhi Bhavan (Basement),)
Sharanpur Road, Nasik.) ...Petitioners

Versus

1. R.S.Luth Education Trust)
(Registered as per Bombay)
Public Trust Act))
having its address at)
Fravashi Academy,)
Trimbak Road, Nasik)
Through its trustees-)

2. Ratan Soli Luth,)
Age: 34 years, Occ:Business &)
Chairman & Trustee of R.S.Luth)
Education Trust)

3. Sharvari Ratan Luth,)
Age: 32 years, Occ:Architect)

& Trustee of R.S.Luth)
Education Trust)

4. Jayshree Madhav Apshankar,)
Age: 53 years, Occ:Pathalogist)
and Trustee of R.S.Luth)
Education Trust)

5. Col.Mukund Keshav Pandit,)
Age: 52 years, Occ:Service &)
Trustee of R.S.Luth Education)
Trust Nos.2 to 4 at Fravashi)
Academy, Trimbak Road, Nasik)

6. In Cable Network At Utility)
Centre, Opposite Rajiv Gandhi)
Bhavan (Basement), Sharanpur)
Road, Nasik)
Through Milind Kapse,)
Age:Adult, Occ:Business)

7. Hath Way Nasik Cable Network)
Pvt. Ltd At Shiledar Bhavan,)
Shingada Talav, Nasik)
Through Rajesh Vohra,)
Age:Adult, Occ:Business,)
At Shiledar Bhavan,)
Shingada Talav, Nasik)

8. Prashant Cable Network,)
Opp. Bytco Hospital,)
Near Durga Udyan,)
Nasik Road, Nasik)
Through Nana Wagh,)
Age:Adult, Occ:Business.) ...Respondents

Shri S.G.Surana for the Petitioners.

Shri Surel S. Shah for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 03, 2007.

JUDGMENT:

1. Heard Shri Surana for the Petitioners and Shri Shah for the first to fifth Respondents. Rule. Shri

Shah waives service for first to fifth Respondents. Service to other Respondents is not necessary as they are the original Defendants. Taken up for hearing forthwith.

2. The Petitioners who are some of the Defendants, filed an Application under section 9A of the Code of Civil Procedure, 1908 for framing preliminary issue of jurisdiction. On the basis of the said Application, the trial Court framed preliminary issue by order dated 10th July, 2006. The said preliminary issue has been answered in favour of the original Plaintiffs by order dated 21st July, 2006 by the trial Court by holding that the Court had jurisdiction to entertain and try the suit.

3. It must be stated here that the Application under section 9A of the said Code was filed by the Petitioners as the first to fifth Respondents have applied for interim injunction and the said Application is pending as of today.

4. In view of the decision of the learned single Judge of this Court in the case of **Solapur Social Urban Co-operative Bank Ltd Vs. Nigam A. Mannan Beskar & Ors (2006(4) Bombay Cases Reporter Page 217)**, an Application

under section 9A of the said Code could not have been filed by the present Petitioners. This Court in the said decision has held that section 9A stand repealed. Thus, there was no occasion for the trial Court to decide the issue of jurisdiction as a preliminary issue at a stage when even Application for temporary injunction is pending. As the Application under section 9A of the said Code was itself not competent, the order on preliminary issue passed on 21st July, 2006 will have to be quashed and set aside. The issue of jurisdiction will have to be decided by the trial Court at an appropriate stage. It will be, however, open for the Petitioners to raise all the contentions which are raised in the Application under 9A of the said Code at the time of hearing of the Application for temporary injunction filed by the first to fifth Respondents. Hence, Revision Application is disposed of by passing following order:

(i) The impugned Judgment and Order dated 21st July, 2006 is quashed and set aside.

(ii) The order dated 10th July, 2006 passed below Application at Exhibit 39 has become inoperative as an Application under section 9A of the Code of Civil Procedure, 1908 could not have been

filed by the Petitioners.

(iii) It is clarified that issue of jurisdiction is expressly kept open which will be decided by the trial Court at an appropriate stage.

(iv) It will be open for the Petitioners to raise all contentions which are raised in Application under section 9A of the Code of Civil Procedure, 1908 at the time of hearing of the Application for temporary injunction.

(v) Revision Application is partly allowed in above terms with no orders as to costs.

JUDGE